

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2530 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

1-5      No

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SD MEHTA

Versus

GUJARAT HOUSING BOARD

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Appearance:

MR IS SUPEHIA for Petitioner

MRS KETTY A MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/07/98

ORAL JUDGEMENT

Rule.

The petitioner is serving as Deputy Executive Engineer in Gujarat Housing Board. Pending prosecution he remained under suspension for the period 30.5.1983 to 2.7.1987. The trial concluded in acquittal by the judgement dated 28.5.1997. The grievance of the

petitioner is that the period of suspension has not been treated as on duty and as such he has also been deprived of promotion. An affidavit has been filed by Shri N.V. Keralia, Administrative Officer, Gujarat Housing Board. It is stated that though the petitioner has been acquitted for the offences under Section 409, 420, and 465 of I.P.C., an appeal against acquittal has been admitted by the High Court. It is contended by Ms. Ketty A. Mehta, learned counsel appearing for the Board that under Sub-rule (2) of Rule 152 of B.C.S.R. the authority is required to consider and form an opinion that the government servant has been fully exonerated or in case of suspension that it was wholly unjustified. As the said appeal has been admitted, it cannot be said that the petitioner has been fully exonerated. In my view, such an opinion cannot be formed only for the reason that the State appeal has been admitted against the acquittal. The opinion under sub-rule (2) of Rule 152 of B.C.S.R. has to be formed after giving an opportunity to the concerned government servant. A departmental enquiry even after acquittal is permissible.

In view of the aforesaid, this Special Civil Application is partly allowed and the respondent is directed to pass a specific order as required under sub-Rule (2) of Rule 152 of the B.C.S.R. after giving an opportunity to the petitioner. It will be open for the department to hold departmental enquiry. Rule is made absolute to the aforesaid extent.

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